IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No.236 of 1994

For Approval and Signature:
HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

HONOURABLE MS.JUSTICE H.N.DEVANI Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF INCOME TAX - Applicant(s)
Versus
ROLCON ENGG. CO.LTD. - Respondent(s)

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Appearance :
MR MANISH R BHATT for Applicant(s) : 1,
SERVED BY RPAD - (N) for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
and
HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 07/12/2005
ORAL JUDGMENT
(Per : HONOURABLE MR.JUSTICE D.A.MEHTA)

1. The Income-tax Appellate Tribunal, Ahmedabad Bench 'C', has referred the following two

questions under Section 256(1) of the Income Tax Act, 1961 (the Act) at the instance of the Commissioner of Income-tax:

1. “Whether, on the facts and in the circumstances of the case, the tribunal is right in law in holding that, while computing the export development allowance u/s 80HHC, the total sales export sales and net profit should be taken into consideration as per para-5 of the order of the tribunal and the allowance should be computed at Rs.94,510/- instead of Rs.12,100/-?”

2. “Whether, the tribunal is right in holding that in working out the export development allowance u/s 80HHC, the assessing officer was not right in taking into consideration the loss of some of the units of the assessee ?”

2. The Assessment Year is 1986-87 and the relevant accounting period is calender year 1985. The assessee-company claimed under Section 80HHC of the Act relief at a sum of Rs.94,100/-, but the Assessing Officer reduced the claim to Rs.12,100/- by considering loss incurred in some of the units. The assessment order on this count came to be confirmed by the CIT (Appeals). The

assessee carried the matter in appeal before the Tribunal who, vide its impugned order, accepted the claim of the assessee.

3. Heard Mr.M.R.Bhatt, learned Senior Standing Counsel for the applicant-revenue. It was submitted that the Tribunal had committed an error in granting relief to the assessee and for this purpose he placed reliance on the Apex Court decision in case of IPCA Laboratory Ltd. Vs. Deputy Commissioner of Income-tax, [2004] 266 ITR 521 (SC). When his attention was invited to the fact that the Apex Court was considering the provision which was not on the statute book in the relevant assessment year, he raised an alternative contention on the basis of provisions of Section 80HHC(3)(b) of the Act to submit that for the purpose of ascertaining whether the amount of relief had been rightly computed or not, the matter may be sent back.

4. Though served, there is no appearance on behalf of the respondent-assessee.

5. As can be seen from the impugned order of the Tribunal it has taken into consideration the provision of Section 80HHC of the Act as it was in force and applicable for the relevant assessment year. Sub-section(3) of Section 80HHC of the Act lays down as to how profits derived from export of goods or merchandise out of India have to be computed for the purpose of working out relief to which an assessee is entitled under sub-section (1) of Section 80HHC of the Act. Under clause (b) of sub-section (3) of Section 80HHC of the Act the parameters that are required to be taken into consideration are the Profits and gains of business, the export turnover and the total turnover in a case where the business carried by the assessee does not consist exclusively of the export of goods outside India. The Tribunal has noted, as a matter of fact, that the assessee's claim was based on these parameters and hence, it has found that the working adopted by the assessee was quite correct. It has further been found by

the Tribunal that the departmental representative had nothing to state except relying on the orders of the lower authorities.

6. In this fact scenario, it is apparent that the Tribunal has not committed any error in law as it has not only applied the relevant provisions as applicable to the assessment year under consideration but also taken note of the basis of working submitted by the assessee in terms of the provisions and found the same to be correct.

7. In so far as the alternative plea is concerned, it is clear from the impugned order of the Tribunal that the working of the relief was very much there before the Tribunal and it has found the same to be correct. Therefore, the alternative plea also does not merit acceptance.

8. In the result, in absence of any infirmity in the impugned order of the Tribunal, both the questions are answered in the affirmative i.e.

in favour of the assessee and against the Revenue. The reference stands disposed of accordingly. There shall be no order as to costs.

Sd/-
[D.A. MEHTA, J]

Sd/-
[H.N. DEVANI, J]

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*Bhavesh**